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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/757,898

01/15/2004

Robert H. Walker

WAL19 P-300

4736

277

7590

01/31/2007

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EXAMINER

WUJCIAK, ALFRED J

ART UNIT

PAPER NUMBER

3632

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/757,898

Applicant(s)

WALKER, ROBERT H.

Examiner

Alfred Joseph Wujciak III

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3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This is the final Office Action for the serial number 10/757,898, FACIA GUARD BRACKET, filed on 1/15/04.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # 5,573,227 to Hemauer et al.

Hemauer et al. teaches a bracket (200) comprising a first generally U-shaped recess (located in between 210, 230R and 240), a fastening member (46 shown in figure 5) and a second generally U-shaped recess (20c). The bracket includes an extension (10) having one or more generally U-shaped recess (20a-20b). Furthermore, Hemauer et al. teaches plurality of brackets (see figure 5) secured along the facia board of a roof between trusses (44).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemauer et al. in view of US Patent # 5,314,167 to Holloman.

Hemauer et al. teaches the fastening member but fails to teach the fastening member is a bolt. Holloman teaches the fastening member is a bolt (20). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have replaced Hemauer et al.'s fastening member with bolt as taught by Holloman to provide convenience for detaching the bracket from the truss.

Response to Arguments

Applicant's arguments filed 11/14/06 have been fully considered but they are not persuasive.

The applicant argues that Hemauer et al. that is being used as 102 rejection in the office action fails to teach or show functional language to show it has the ability of performing the recited function. The examiner disagrees with the applicant regarding showing or teaching the functional language because it is not required to cited functional language in Hemauer et al.'s invention as long Hemauer et al.'s elements have the ability of performing the function such as mounting on board of a roof between trusses. Hemauer et al.'s invention is designed to provide a fall protection for the constructor when working on the roof.

The applicant argues "Hemauer et al. is directed to a stanchion, which has a bracket part that is attached to both the fascia board and a rafter. Hemauer et al. is different from the present claimed invention in that the device must be mounted at the fascia board where the rafter truss is located. The Hemauer et al. device is attached to the fascia board by nailing through a 'facial nailing flange', and not a U-shaped recess. The examiner disagrees with the applicant because

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the brackets are mounted on the facia board wherein the facia board is located adjacent to trusses (44) of the roof (as shown in figure 1). Furthermore, Hemauer et al. shows the facia board is secured in U-shaped recess (210, 230R, and 240). Elements 210, 230R and 240 together create U-shaped recess for the facia board to be rested therein and secured by nailing (46).

The applicant argues that Holloman teaches different invention from Hemauer et al.'s and that Holloman cannot be used on the roof because it is designed for floor. Since Hemauer and Holloman both teach same field of endeavor for providing protection on a building structure. They both teach temporary rail for mounting on the building structure to prevent constructor from falling off. Holloman teaches U-shaped bracket (14) for mounting on board which can be used on facia board of roof structure that provides the ability to be used on roof structure to provide protection for the constructor.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

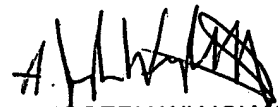
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (571) 272-6827. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III
Primary Examiner
Art Unit 3632

1/27/07


A. JOSEPH WUJCIAK III
PRIMARY EXAMINER
TECHNOLOGY CENTER